114-663

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~681.~~ 947

CALVIN AMORY STEVENS

Appellant,

vs.

THE NASHVILLE AND DECATUR RAILROAD COMPANY, AND THE LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 8, 1881.

UNITED STATES SUPREME COURT.

No.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of the State of Tennessee, issued to the Tennessee and Alabama Railroad Company,

vs.

THE NASHVILLE AND DECATUR RAILROAD COMPANY and the LOUISVILLE, NASHVILLE and GREAT SOUTHERN RAILROAD COMPANY.

TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States, Sixth Judicial Circuit, Middle District of Tennessee.

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Robert Clarke & Co., Printers, Cincinnati, O. [*Jan.*, 1879.

United States Circuit Court,

Sixth Judicial Circuit, Middle District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Tennessee and Alabama Railroad Company,

versus

The Nashville and Decatur Railroad Company et al.

BILL FOR RELIEF.

E. L. ANDREWS and
GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

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Solicitors, and of Counsel for Complainant.

United States Circuit Court,

Sixth Judicial Circuit, Middle District of Tennessee.

IN EQUITY.

To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Middle District of Tennessee.

Your orator, Calvin Amory Stevens, who is a citizen of the State of New York, brings this, his bill of complaint, against the Nashville and Decatur Railroad Company and the Louisville, Nashville and Great Southern Railroad Company, which are citizens of the State of Tennessee, and corporations organized, existing, and transacting business in said State by virtue of, and under, an act of the General Assembly of said State.

And thereupon your orator, complaining, shows unto your Honors that he brings this bill of complaint, as well on behalf of all other holders of the Internal Improvement bonds loaned by the State of Tennessee to the Tennessee and Alabama Railroad Company, who may join in the prosecution and contribute to the expenses of this litigation, as on his own behalf as a holder of said bonds.

Your orator shows that the Tennessee and Alabama Railroad Company is a body, politic and corporate, chartered by acts of the General Assembly of the State of Tennessee. The object and purpose of the creation of said corporation, by the said several charters, was the construction, completion, and, thereafter the operation and management of a line of railway for the transportation of passengers and freight from the city of , in the

State of , through the territory of the State of Tennessee, to a point in

For this purpose powers were granted to said corporation, as are declared in the several charters and acts of incorporation. The said corportion was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for, and insure the payment of, its liabilities.

Your orator shows that in the month of January, 1868, a consolidation of the said Tennessee and Alabama Railroad Company with the Central Southern and the Tennessee and Alabama Central Railroad Companies was perfected pursuant to law. The consolidated corporation adopted the title of the Nashville and Decatur Railroad Company, by which name it is united as a respondent to this bill. On the first day of July, 1872, pursuant to a contract of lease theretofore made according to law, the Louisville, Nashville and Great Southern Railroad Company took possession as lessee of the said Nashville and Decatur Railroad, and now operates the same under the said lease

Your orator makes part of this, his bill of complaint, the said several charters and acts, with their several amendments, passed by the legislature of Tennessee, and attaches copies thereof, marked Exhibit A.

Your orator shows that the General Assembly of the State of Tennessee, by an act, passed the 11th of February, in the year 1852, determined to lend to the railroad companies within its limits, and specified in said act, the aid of its credit, for the completion of their several lines of railway.

The plan of that legislation was that each railroad company should procure a certain amount of *bona fide* subscriptions for its capital stock, and that it should have graded, bridged, and ready for the reception of rails, a certain number of miles of its road. By means of these preliminary requirements, assurance was obtained that each railroad company would be competent to fulfill the obliga-

tions it was to incur under the statute hereinafter set forth. The period of four years was allowed for the completion of each section of a road. The act proceeds to authorize and give validity to bonds of the State, which the governor was required to issue to each company. The amounts of the bonds were to be ascertained by the length of each railroad within the State, and the proceeds of the bonds were to be exclusively applied to the payment of the railroad iron, and equipments of the road to which they were loaned. The president of each railroad company, assisted by a commissioner appointed by the governor, was to negotiate the sale of the bonds loaned to his company. The act was made a public law for all purposes of notice, and a system of numbering was adopted for distinguishing each bond, and identifying the company to which it was issued. The tenor of the act which gave existence to the bonds, was, that each company become liable upon, and bound to perform, the obligations contained in, and represented by, the bonds loaned to it. Each company was to pay, from its own means, the interest upon the bonds loaned to it, as the same matured from time to time, and also to pay and discharge the principal debt, as it was expressed upon said bonds, when the same matured.

Your orator shows that the sale of the said bonds was to be the means of raising the money requisite for completing the superstructure, laying the rails, and providing the equipment of the roads. The bonds loaned to each company were to be payable in such places in the United States as its president might designate. In order to insure the said sale, and make a market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become the purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it, or, in case of its failure, that ample security should be provided therefor, which might be easily realized, it was provided by the statute, that "so soon as the bonds of the State shall have been issued for the first section

of the road, they shall constitute a lien upon said section, without a deed from the company," and the "State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage, without a deed from the company for the payment by said company of said bonds, with the interest thereon, as the same becomes due, and with a like mortgage or lien, without a deed from the company, upon the additional sections, and upon the entire road, including the stock, for the payment of all of the bonds issued to the company, and for the interest accruing thereon." This statutory lien was to be operative at once, and without conveyance or assurance of any kind from the corporations, and was to be superior to all other liens, upon the entire road and property of any corporation so receiving such public assistance, in the State of Tennessee. The statute was to be a substitute for a mortgage executed by each railroad company, for the purposes named in the act.

By the terms of an act of the same session provision was made for a public and official record of the issues of bonds to the several roads.

The Comptroller of the State was required to sign and number the coupons of the bonds issued to each railroad, and the Secretary of State was required to number and countersign the bonds; and upon delivering bonds to the several companies, the Secretary of State was required to take a receipt, reciting the number, date, and amount of the bonds so delivered. These receipts were to be taken in a well-bound book, to be deposited in the office of the Secretary of State.

The General Improvement law, above referred to, is herewith set out fully and at length, to wit:

AN ACT to Establish a System of Internal Improvements in this State.

SECTION I. *Be it enacted by the General Assembly of the State of Tennessee*, That whenever the East Tennessee and Virginia Railroad Company shall

have procured *bona fide* subscriptions for the capital stock in said company to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and whenever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus, in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that section, or any part thereof, is not subject to any lien whatever, other than those created in favor of the State by the acts of 1851–2, by the written affidavit of the Chief Engineers and President of said company, together with the written affidavit of a competent engineer by him appointed, at the cost of the company, to examine said section, then said Governor shall issue *to said company* coupon bonds of the State of Tennessee, to an amount not exceeding eight thousand dollars per mile on said section, and on no other condition, *which bonds shall be payable at such place in the United States as the President of the Company may designate*, bearing an interest of six per centum per annum, payable semi-annually, and not having more than forty nor less than thirty years to mature.

SEC. 2. *Be it enacted*, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same unless upon the affidavit of said President, and a resolution of a majority of the Board of Directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails, and the Governor shall have power to appoint a commissioner to act under oath, in conjunction with said President, in negotiating said bonds for the purposes aforesaid, and to

act in any other matters pertaining to said company, where the interest of the State, in the opinion of the Governor, may require it.

SEC. 3. *Be it enacted, That so soon as the* BONDS *of the State shall have been issued for the first section of the road as aforesaid,* THEY *shall constitute a lien upon said section so prepared as aforesaid,* including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same shall be *invested* with *said* lien or mortgage without a deed from the company, *for the payment by said company of said bonds,* with the interest thereon as the same becomes due.

SEC. 4. *Be it enacted,* That when said company shall have prepared as aforesaid a second section, or any additional number of sections, of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of the facts as before provided, he shall, in like manner, issue to said company like bonds of the State of Tennessee, to an equal amount with that before issued under the first section of the act for each and every section, of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions hereinbefore provided, and upon the issuance of the said bonds, the State of Tennessee shall be *invested* with *a like mortgage or lien* without a deed from said company, upon said stock, and upon *said first and additional section or sections* of said road so prepared, upon the rails and equipments put, or to be put, upon the same, *for the payment of said bonds and the accruing interest thereon.* Provided, that if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified, shall be less than thirty miles in extent, bonds of the State shall be issued for such section, or such railroad, as may be less than thirty miles in extent for an amount in proportion to the distance, as provided in this act, but upon the same terms and conditions in all respects, as required in

regard to the bonds to be issued for the other sections of said road. And when the whole of said road shall be completed the State of Tennessee shall be *invested with a lien, without a deed from the company*, upon the entire road, including the stock, right of way, grading, bridging, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business; and all depots, and depot stations, *for the payment of all of said bonds issued to the company* as provided in this act, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for the said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over, or come in conflict with, the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, which shall have priority over all other claims existing or to exist against said company.

SEC. 5. *Be it enacted, That it shall be the duty of said company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange or necessary commissions*, or SATISFACTORY EVIDENCE THAT SAID INTEREST HAS BEEN PAID OR PROVIDED FOR, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that effect to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee, in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits, and dividends, *and pay over the same, under the direction of the Governor, toward the liquida-*

tion of such unpaid interest. And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the person so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of the counties through which the road shall run, commanding them to take possession of said road, fixtures, and equipments, and everything pertaining thereto, and place the said receiver in full and complete possession of the same, and said receiver so appointed shall continue in the possession of said road, fixtures, and equipments, and run the same, and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to said proceedings, *to pay off and discharge the interest as aforesaid, due on said bonds,* which being done, the receiver shall surrender said road and fixtures and equipments to said company. The comptroller shall from time to time settle the accounts with the receiver, and the balance shall be deposited in the treasury of the State. The comptroller is authorized, and it is made his duty, upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds, *as may not be provided for by the compauy, as provided for in this act,* and the comptroller shall report thereof to the general assembly from time to time.

SEC. 6. *Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due,* it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company of the fact; and thereupon, said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by tho Ceurt, *to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee, against any loss on account of the issuance of said bonds,* by ordering the said railroad to be placed in the hands of a receiver; ordering the sale of said road, and all the property and assets attached thereto

or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 7. *Be it enacted*, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, *and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company; and bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be directed as aforesaid*, AND CANCELED. And should said company fail to comply with the provisions of this section, it shall be proceeded against, *as provided in the 5th section of this act.*

SEC. 8. *Be it enacted*, That the President of the company shall make semi-annual reports, under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and the company, and after its completion he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings, and dividends, and what per cent. is paid on the stock to the stockholders. And said reports shall be consolidated every two years by the President of said company, and said consolidated reports shall be laid before the Governor by the first of September, every two years after the completion of the road, and the Governor shall lay said report before the Legislature for its action, at the next meeting thereof, after said report is made.

SEC. 9. *Be it enacted*, That it shall not be lawful for any officer of said company to engage in any speculation or dealing, directly or indirectly, in any real estate on or along the line, at any of the de-

pots or depot stations, or at either terminus of said road, until after the road is completed, and every officer of the company, before entering upon the duties of his office, shall take an oath in writing, before any judge or justice of the peace in this State, that he will not knowingly violate the provisions of this act, and that he will faithfully perform the duties of his office; and if any such officer of the company, or other person taking an oath as herein provided, knowingly swear falsely, he shall be deemed guilty of perjury, and subject to all the pains and penalties thereof, and every affidavit required under this act may be sworn to before any judge or justice of the peace in this State.

SEC. 10. *Be it enacted*, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown, and Charlestown Railroad Company, the Nashville and Northwestern Railroad Company, the Louisville and Nashville Railroad Company, the Southwestern Railroad, the McMinnville and Manchester Railroad Company, the Memphis and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville, and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this act.

SEC. 11. *Be it enacted*, That the gauge of all of said railroads (unless connecting with roads in other States of a different gauge) shall be the same as that of the Nashville and Chattanooga Railroad, and not otherwise, and the iron rails to be put upon said road shall not be less than eighty tons to the mile, if the U rail is used, and not less than one hundred tons to the mile if the T rail is used.

SEC. 12. *Be it enacted, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed neces-*

sary to protect the interest of the State, and to secure the State against any loss IN CONSEQUENCE OF THE ISSUANCE OF BONDS UNDER THE PROVISIONS OF THIS ACT. BUT IN SUCH MANNER AS NOT TO IMPAIR THE VESTED RIGHTS OF THE STOCKHOLDERS OF THE COMPANIES.

SEC. 13. *Be it enacted*, That it shall be the duty of the Governor, from time to time, when there shall be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of bonds of this State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute, in the name of the State, a suit in the Circuit or Chancery Court of the county of the place of business of the company, setting forth the facts; and when the fact shall satisfactorily appear to the Court, that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning, and provisions of this act, then, and in such case, the Court shall order, adjudge, and decree, that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the treasury, *and it shall be the duty of the comptroller immediately to vest the same in stocks, creating a sinking fund, as provided for in the 7th section of this act;* and said company shall forfeit all rights and privileges under the provisions of this act, and the stockholders thereof shall be individually liable *for the payment of the bonds so fraudulently obtained* by such company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by such company, excepting such stockholders as may show to the said Court that they were ignorant of or opposed to the perpetration of such frauds by the company.

SEC. 14. *Be it enacted*, That in the event any of the roads, fixtures, or property belonging to any of said roads shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property, in the name of the State; and in case said

agent shall purchase said road for the State, *the Governor shall appoint a receiver, who shall take possession of said road and property, and use the same as provided for in the 5th section of this act*, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

SEC. 15. *Be it enacted, That this act shall be deemed and taken to be a public act as to all purposes of notice: Provided*, That should any of the companies hereinbefore enumerated have, *bona fide*, and before the passage of this act, purchased or otherwise contracted for, upon their own credit, the necessary iron, rails, spikes, equipments, for the road or roads, or any section or sections thereof, the bonds of the State shall be issued to such company or companies, as hereinbefore prescribed.

SEC. 16. *Be it enacted*, That the railroad companies specified in this act, and all other railroad companies hereafter incorporated in this State, shall have power to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other, or with the branches thereof; and it shall be the duty of said companies, when required, to receive on their roads and branches, the full loaded freight cars from each other and the branches thereof, and transport the same to their destination, and return them, without charging for the transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars. *Provided*, that said companies shall not be compelled to receive such cars on their roads, unless they are constructed with the same gauge, and are of equal strength with their own cars, of which the principal engineer of the road of which it is proposed to require said cars to be transported shall be the judge. *Provided*, that the bonds of the State, proposed to be issued to the Memphis and Charleston Railroad Company under the provisions of this act, shall, in event of their issuance to said company, be divided between the main trunk line, proposed to be constructed by said company, and the branch thereof, from the town of Moscow to the town of Sommerville, in the county of Fayette, according to the respective lengths of

said main trunk line and said branch; and the lien of the State, as herein secured, shall continue upon said main line, and also upon said branch, until said bonds and interest are paid, as heretofore provided.

SEC. 17. *Be it enacted*, That in all cases where bonds may be issued to any of said companies, as provided in this act, the State of Tennessee shall be entitled to two directors in each company, to be appointed by the Governor of the State, to which bonds may be issued.

SEC. 18. *Be it enacted*, That when the Nashville and Chattanooga Railroad Company shall have completed twenty-five miles of their road, in addition to the eighty miles specified in the second section of the act, passed the 4th of February, 1848, chapter 169, then the Governor of the State shall indorse and guarantee, in the name and on behalf of the State of Tennessee, the bonds of said company to the amount of one hundred and seventy-five thousand dollars, and in like manner, when another section of twenty-five miles of said road shall have been completed, the Governor of the State, in the name and on behalf of the State, shall indorse and guarantee the bonds of said company to the additional amount of one hundred and seventy-five thousand dollars, and said bonds are to be indorsed and guaranteed in the same manner, and the same indemnity is to be furnished by said company for the protection of the State, and the like lien is to be given, and the same character of bonds are to be indorsed and guaranteed, as provided in the said act of the 4th of February, 1848.

SEC. 19. *Be it enacted*, That the aid contemplated by the first section of this act, shall only be extended to one of the roads chartered under the names of the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company. *Provided*, That the first of said roads which shall secure the subscription of the capital stock, for the construction of the same, shall be entitled to such aid. *Provided further*, If the Nashville and Southern Railroad Company first obtained the stock in their railroad, as provided in the first section of this act, and shall construct their road to the Tennessee river, to the Mississippi State line, or to a point between the

Tennessee river and the Mississippi State line, then the Tennessee and Alabama Railroad Company may construct their road from the Alabama State line to intersect with the Nashville and Southern Railroad, at such point as said company may select, and the provisions of this act shall extend to the Tennessee and Alabama Railroad, from said Alabama State line to said point of intersection. But if the Tennessee and Alabama Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and construct their road to the Alabama line, in the direction of Florence, then the Nashville and Southern Railroad Company may construct their railroad from the Tennessee river, the Mississippi State line, or any point between the Tennessee river and the Mississippi State line, so as to intersect the Tennessee and Alabama Railroad, at such point as the company may select, and the provisions of this act shall extend to said railroad from said point of intersection to the Tennessee river, the Mississippi State line, or to any point between the Tennessee river, and the Mississippi State line. And the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company, shall have power to unite or consolidate their stock if they deem it advisable, and upon such terms as the companies may agree upon. *Provided also*, that if the Memphis and Nashville Railroad Company shall not comply with the requirements of this act, and complete thirty miles of their road within four years; or if the Nashville and Northwestern Railroad Company shall, in like manner, fail to complete thirty miles of their road within four years, then the Tennessee Central Railroad Company shall have all the rights, powers, privileges, and benefits intended to be given by this act, to those companies respectively, under the same restrictions and limitations; but the said Tennessee Central Railroad Company shall be allowed two years longer time, in which to prepare thirty miles of their road-bed for the reception of the iron rails, and may then receive the aid of the State, in the issuance of bonds for their benefit, as prescribed in this act. *Provided*, That this provision shall not preclude any subsequent legislature from extending the time of four

years, in which to complete any section of thirty miles of said Nashville and Memphis, or Nashville and Northwestern Railroad. *That each of said companies is hereby authorized and required to appoint an agent or agents to whom the bonds shall be delivered, and whose duty it shall be to control said bonds, and see that they are exclusively applied to the payment of the railroad iron and equipments, as provided for in this act, and for no other purpose whatever.* And the said agent, before he receives the bonds of the State, shall give bond and security, to be approved by the Governor and payable to the State of Tennessee, for the application of the bonds, or the proceeds thereof, to the purposes aforesaid. *Provided*, That before any bonds, under the provisions of this act, shall be issued to any agent of any railroad contemplated by this act, the president of any such company shall first deposit in the office of the Secretary of State, a full, true, and accurate list of all the stockholders, with the sums subscribed by each and every stockholder.

SEC. 20. *Be it enacted*, That no road embraced in this act shall be entitled to State aid unless it shall, *within four years*, complete at least one section of thirty miles, or the whole length of the road, if less than thirty miles long.

Those portions of the act of February 21st, 1852, providing for identification of the bonds, by means of public records, are as follows :

SEC. 7. *Be it further enacted*, That the different Internal Improvement Companies, to whom the bonds of the State may be loaned under the different acts of the present Legislature, shall pay the expenses of engraving and preparing the same.

SEC. 8. *Be it enacted*, That the Governor of the State shall cause to be engraved and printed, the bonds which may be issued under the acts of the present General Assembly, as a loan made to Internal Improvement Companies, and the said bonds shall bear date on the first day of January prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. *Be it enacted, That the coupons shall be signed and numbered by the comptroller, and the bonds shall be countersigned, sealed, and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date, and amount of said bonds,* in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party receiving the said bond.

Your orator shows that the State of Tennessee, by act of its General Assembly, passed on the 8th of February, 1854, increased the amount of bonds to be issued to the several "internal improvement companies from $8,000 to $10,000 per mile," and provision was made for an issue of similar bonds to be used for bridge purposes. The said act was amendatory of the act passed 11th of February, 1852, "to establish a system of internal improvement in this State," and required that the increased amount of bonds should be received, "upon the terms and conditions mentioned in the act, which this was intended to amend." By the act of February 17, 1854, the length of the sections which it was necessary for the railroads to complete before obtaining bonds of the State, was decreased from twenty to ten miles, after the completion of the first section of thirty miles. By the act of January 19, 1855, the foregoing act was amended so that the grading only of ten-mile sections was required, in lieu of the completion of said sections. The act of October 29, 1855, was amendatory of the bridge law, above mentioned.

Your orator attaches hereto copies of said acts above referred to, marked Exhibit B, and makes them a part of his bill of complaint.

Your orator shows that there was delivered on account of the Tennessee and Alabama Railroad and to the company of that name, internal improvement bonds of the State of Tennessee, being of the numbers, dates, and in the amounts hereinafter set forth :

916 to 1,115, White, B, 200	$200,000
1,116 to 1,215, White, B, 100	100,000
5,971 to 5,987, White, B, 17	17,000
6,220 to 6,269, White, B, 50	50,000
6,781 to 6,848, White, B, 68	68,000
6,849 to 7,080, White, B, 232	232,000
8,080 to 8,111, White, B, 32	32,000
8,112 to 8,154, White, B, 43	43,000
8,617 to 8,629, White, B, 13	13,000
10,308 to 10,321, White, B, 14	14,000
2,896 to 3,095, Green, no letter, 200	200,000
3,206 to 3,305, Green, no letter, 100	100,000
	$1,069,000

A copy of one of the said bonds and coupons is hereto attached, marked Exhibit C.

Your orator shows that the said bonds, to the amount of $1,069,000, were received by or on behalf of the Tennessee and Alabama Railroad Company through the officers appointed in the act of February 11, 1852, and were, by the said company, negotiated and sold, in pursuance of law, to *bona fide* holders. The proceeds of these bonds were to be applied to enable the company to which they were loaned, to earn the interest and principal moneys of the said obligations. About five hundred and thirty-three of the said bonds are now outstanding in the hands of *bona fide* holders. Your orator is the owner and holder of thirteen of said bonds for $1,000 each, and being of the numbers, dates, and descriptions in all respects of the bonds heretofore described and issued to the Tennessee and Alabama Railroad Company by the State of Tennessee.

Your orator is likewise the holder of seven coupons, attached to each one of said bonds, the same representing the installments of interest for three and one-half consecutive years, beginning with the installment that fell due on the 1st of January, 1876, and including the installment of the first day of January, 1879, and amounting in the aggregate to twenty-one per cent. of the par or principal amount of each one of the aforesaid bonds. Your orator shows that the holders of said bonds are very numerous, and reside in

foreign countries, as well as in different parts of the United States. Their names are in great part unknown to your orator, and they are therefore not made parties hereto.

And further complaining, your orator shows that the Tennessee and Alabama Railroad Company and its successor company, and all the respondents hereto, have failed to comply with the provisions of the general internal improvement law above recited, for the payment of the said installments of interest on your orator's bonds, and on the bonds of other holders in like situation, and the coupons of the bonds aforesaid are now in default and unpaid.

Your orator charges like defaults upon the coupons that have fallen due and have become payable by the Tennessee and Alabama Railroad Company and its successor company, according to the terms of the statute, on the first day of January, 1876; on the first day of July, 1876; on the first day of January, 1877; on the first day of July, 1877; on the first day of January, 1878; on the first day of July, 1878, and on the first day of January, 1879. The State of Tennessee is likewise in default on said coupons.

Your orator is entitled to the enforcement of the lien aforesaid, for the payment of interest on his bonds, and those of other holders, and for the appointment of receivers, under the powers of this Court of equity, for the purposes described in the statute.

Your orator further shows that it is provided by the statute that upon default in the payment of interest by any of the Internal Improvement Companies, upon the bonds loaned it, the right to impound the rents, issues, profits, and dividends shall accrue, for the purpose of paying over the same toward the liquidation of the unpaid interest. For the execution of that purpose, it provides that some suitable person or persons shall be appointed as receivers to take possession and control of said railroad, and all the assets thereof. Said receiver is to continue in possession and manage the entire road until a sufficient sum shall be realized, exclusive of the costs and

expenses incident to such proceedings, to pay off and discharge the interest due on the bonds.

And now your orator shows that the said railroad company pretends and claims that the aforesaid lien on its property is satisfied and discharged, without payment of the interest or principal of your orator's bonds, and that it is also absolved from the obligation which it assumed by the acceptance and use of your orator's bonds to pay the interest thereon.

It claims that the discharge of said incumbrance has been effected by and through the means of certain legislation, enacted in the years 1869 and 1870, many years after the sale of the said bonds, and while the same were outstanding, in the hands of *bona fide* purchasers thereof.

The said company pretends that by the act of February 21, 1856, increasing the sinking fund to two per cent. per annum, to commence from the date of the issuance of internal improvement bonds, and providing for reinvestment of the accruing interest in the sinking fund, it was intended that deliveries of bonds into the sinking fund should constitute a discharge of the statutory lien on the road, without payment of interest or principal of the bonds loaned to the company. It claims a similar effect to be deduced from the act passed on 20th March, 1860. Copies of the said acts are herewith attached, marked Exhibit D.

The said company likewise pretends that, by means of the acts of February 25, 1869, and of January 2, 1870, it was enabled to extinguish the obligation to pay the interest and principal of the internal improvement bonds issued to it, by means of the delivery to the State of any obligations of the State, though the said obligations were not secured by a statutory lien upon the Tennessee and Alabama Railroad, or issued in aid thereof. The defendant claims to have complied with the provisions of said acts, and to have thereby discharged the said incumbrance, without payment of the bonds for which it was responsible.

Your orator shows that the said pretense is fraudulent, and he charges the facts to be as follows:

During the late civil war the railroad companies did not pay the interest on the bonds issued to them, and after the war they still continued in great part in default in making the payments of interest on the said bonds. The State of Tennessee had likewise been in default during the same time. The market value of the bonds had meanwhile fallen very greatly, and the securities were very much depreciated, to about fifty per cent. or less of their par value.

Under these circumstances, the officials of the railroad companies conceived the project of avoiding the liabilities of these corporations for the payment of the bonds loaned to them. Their project was to treat the lien on the railroads as the absolute property of the State, without regard to the trust in favor of the holders of the bonds whose moneys the companies had received. They purposed to induce the legislature to proceed upon this basis, and to assign the lien on each road, in consideration of the receipt by the State of an amount of its bonds from each company, without regard to whether they were the bonds loaned to and the obligations of the company delivering them, and were entitled to the lien on its road. They applied themselves to the procurement of such acts of the General Assembly of Tennessee as they deemed would assist them in the accomplishment of their projects.

Your orator shows that the General Assembly did pass an act on February 25, 1869, a copy of which is hereto attached, marked Exhibit E. Your orator shows that the said act, as passed, differed in material respects from the bill drafted by the agents of the corporations. It had been amended in the course of its passage through the assembly, so as to preserve the rights of the Internal Improvement bondholders to their liens on the several railroads.

Your orator shows that the railroad companies, not being content with the said act, and not deeming that they had thereby acquired even the appearance of legislative support for the project on which they desired to enter, procured, at the next session of the legislature, the introduc-

tion of a bill, which, as amended, became the act of January 2, 1870, a copy of which is hereto attached, marked Exhibit F.

Your orator further shows that the said last mentioned act, as passed, differed in material respects from the bill which the officials of the railroad corporations had procured to be introduced, as appears by the insertion of the provisions hereinafter referred to.

Your orator shows that about said time the officers of some of the railroad corporations obtained the opinion of counsel that they might safely embark on the venture above described, and disregard the rights and liens of the holders of the internal improvement bonds. Your orator prays leave to bring proof of said opinions on the trial, and particularly of the opinion of Edward H. East and others. Your orator shows that at the time the officials of some of the railroad companies offered the new or so-called substitution bonds for sale (which bonds they claimed had acquired the lien of your orator's bonds), they published an opinion of New York counsel seeking to show that the State had the right to treat the liens of the internal improvement bonds in the manner above described. The said transaction in all its entirety was fully understood by the railroad company, and by the purchasers of the new bonds, as appeared from the face of their bonds, the deed purporting to secure them, and the legal opinions above mentioned. They knew that they were engaged in an attempt to grasp the security and property conferred by the distinct language of the statute upon the holders of the internal improvement bonds, for the payment of the interest and principal of their bonds.

Your orator further avers and shows that the said pretenses and claims are illegal and invalid and fraudulent. The defendants never had, nor have they, any right to affect or impair the contract and lien which was created and entered into by and between the holders of the internal improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as trustee of the said lien or

mortgage, and the railroad company as the debtor under the said contract and lien.

Your orator charges that none of the aforesaid acts of the General Assembly purport to authorize the discharge of the lien of the internal improvement bonds, issued to the railroad company, in any other mode than by the delivery of the identical bonds constituting liens upon the said railroad. The act of February 25, 1869, provides that the interest of the present bondholders of the State shall not be affected, and that railroad companies which have issued second-mortgage bonds, availing themselves of the provisions of that act, shall file with the comptroller, bonds of the same series as those loaned to such company, for which the State holds a first-mortgage lien. The act of January 2, 1870, requires that its provisions shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund.

Your orator charges that, under and by virtue of the provisions of the general internal improvement law of February 11, 1852, the State of Tennessee was only secondarily liable for the bonds loaned by it to the Tennessee and Alabama Railroad Company, and that the said company was primarily liable under the provisions of said act, for the payment of the principal and interest of said bonds. And your orator charges that the said acts were not applicable by their terms to the lien secured to the bonds issued in aid of the Tennessee and Alabama Railroad Company.

Your orator further charges that by the terms of the general improvement law of February 11, 1852, the State of Tennessee constituted herself the trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act. The terms of that trust were defined and set forth in the sections of the statute.

By the acceptance of the bonds, and the use of their proceeds by the Tennessee and Alabama Railroad Company, a mortgage lien attached to the property of the com-

pany, without a deed from the company, and the conditions of that mortgage were as prescribed in the statute. By the purchase of the said bonds, the holders thereof became entitled, by contract, to the lien rights set forth in the internal improvement law. That lien was distinctly specified to be for the payment of the principal and interest of the bonds loaned to the company, as the same accrued and became due.

Your orator charges that the aforesaid acts, of date subsequent to the issuance of said bonds, in so far as they attempt, or may be construed to have authorized the satisfaction of the statutory lien established for the benefit of the holders of the internal improvement bonds of Tennessee loaned to the said company, by any other means than payment, impaired or sought to impair the obligation of the contract aforesaid, and were in violation of the Federal Constitution, and void, and all acts committed thereunder are illegal and null.

Your orator likewise shows that, by virtue of his right in equity as a lienholder and the terms of the statutory mortgage above described, he is entitled to have the possession of the Tennessee and Alabama Railroad, in the State of Tennessee, secured by a receivership, for the benefit of the holders of the internal improvement bonds aforesaid, loaned to the Tennessee and Alabama Railroad Company, and for the payment of the interest thereon, for which the said company became bound. The receiver or receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orator shows that the officials of the State of Tennessee, named in the internal improvement law for the execution of the trusts pertaining to the statutory receivership, to wit, the comptroller and the governor, claim to be bound by the subsequent acts of the General Assembly of Tennessee, passed in the years 1869 and 1870, and your orator is unable to obtain the action of the said officials, or of the State of Tennessee, as trustee for the execution of the

trusts aforesaid. Your orator shows that he is remediless at law and without the intervention of a court of equity.

Wherefore, your orator prays that the priority of the said lien of the internal improvement bonds and coupons aforesaid, upon all the railroad equipment, incomes, tolls, rights, privileges, property, and franchises of said Tennessee and Alabama Railroad Company, within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights. That the income of said property, arising from its use in said State, may be applied to the payment of interest accrued and to accrue upon the bonds hereinbefore described, and as may appear by proofs before a master to be still outstanding and unpaid. That the said property may be seized by order of this Court and placed in the hands of receivers, to be administered according to the liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied.

And, may it please your Honors, to grant unto your orator such further or other and different relief in the premises, as the nature of the case may require, and be consistent with equity and good conscience.

May it please your Honors, to grant unto your orator writs of subpena of the United States of America, to be directed to the said Nashville and Decatur Railroad Company and the Louisville, Nashville and Great Southern Railroad Company, and against all other persons interested in this matter and amenable to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honors, in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such orders and decrees therein as to your Honors shall seem meet.

E. L. ANDREWS and GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

APPENDIX.

Exhibit B.

ACT OF FEBRUARY 8, 1854.

AN ACT to amend an act passed 11th February, 1852, entitled "An Act to establish a system of Internal Improvement in this State."

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the bonds of the State shall issue to the companies mentioned in the first and tenth, and nineteenth sections of the act which this is intended to amend, and also to the "Edgefield and Kentucky Railroad Company," "Central Southern Railroad Company," "Knoxville and Charleston Railroad Company," Mississippi Central and Tennessee Railroad Company," "Knoxville and Kentucky Railroad Company," "Tennessee Western and Charleston Railroad Company," and "Cincinnati, Cumberland Gap and Charleston Railroad Company," *upon the terms and conditious mentioned in the act which this is intended to amend*, but to the extent of ten thousand dollars (instead of eight thousand) per mile. *Provided*, that the aid of the State shall be extended to the South Carolina, Tennessee and Kentucky Railroad Company, in lieu of the Knoxville and Charleston Railroad Company, to the extent of fifty-five miles, and no more, in the event the Blue Ridge Railroad Company of South Carolina shall adopt the charter of said South Carolina, Tennessee and Kentucky Railroad Company, and obligate themselves in such manner as shall be satisfactory to the Governor, not to stop the construction of the said road at a junction with the East Tennessee and Georgia Railroad, but to build said road to South West Point; and said South Carolina, Tennessee and Kentucky Railroad Company, before it shall receive the aid herein provided, shall bring itself within the general provisions in all respects, of the act which this is intended to amend. But should the Blue Ridge Railroad Company not adopt such charter, and enter into the obligations aforesaid, then the provisions of this act and that which it is intended to amend, shall apply in all things to the Knoxville and Charleston Railroad Company.

SEC. 2. *Be it further enacted*, That bonds of the State shall issue to the companies mentioned in the first section of this act, and the tenth and nineteenth sections of that which this is intended to amend, for each bridge that said companies, or either of them, may have to build in East, Middle, and West Tennessee, across the Holston, Clinch, Big Hatchie, Tennessee, and Cumberland rivers, for the maximum sum that bonds are provided to be issued to said East Tennessee and Georgia Railroad Company, by an Act passed February 4, 1852, entitled, "An Act to aid in the completion of the East Tennessee and Georgia

Railroad," and upon the terms and conditions mentioned in said Act (except the 2nd section), and also in the fifth and sixth sections of an Act, passed February 26, 1852, entitled "An Act to charter the Chattanooga, Blue Spring, and Cleveland Railroad Company, and for other purposes," and said bonds to be issued under this section shall be included in the aggregate amount of stock raised by said companies in the same manner that the three hundred thousand dollars of bonds loaned to the East Tennessee and Virginia Railroad Company, under an Act, passed January 15, 1852, to enable said company to build bridges, are provided to be included in the aggregate amount of stock to be raised by the East Tennessee and Virginia Railroad Company.

SEC. 3. *Be it further enacted*, That the office of "Commissioner of Roads" be filled by the appointment of the Governor; that the incumbent shall hold his office for two years, and shall receive an annual salary of two thousand dollars. It shall be his duty to examine into the condition of railroad companies applying for the bonds of the State, and to report on oath to the Governor, the condition of said roads and the companies owning them; inquiring into and reporting all the facts necessary to be reported upon under this Act, and that which this is intended to amend. He shall further superintend and supervise the interest of the State in all the railroads and turnpike roads of this State, and whenever he may deem it necessary, report to the Governor any facts he may believe to be of importance to said interest. The said commissioner, in making his investigations, shall have the power to administer oaths, and send for persons and papers; and may, if in the opinion of the Governor it should be necessary and proper, apply to the Courts for aid to protect said interests; and it shall not be lawful for the Governor to issue such bonds to any railroad company until he shall be satisfied they have complied with the law.

SEC. 4. *Be it enacted*, That if any officer, agent, or servant of any railroad company receiving the bonds of the State, shall appropriate said bonds or the money arising from the sale thereof, or any portion of either, to any other use than that prescribed in the Act under which said bonds shall be issued, such person or persons so offending shall be deemed guilty of a felony, and, upon conviction, shall undergo confinement in the penitentiary for a period of not less than five nor more than fifteen years.

SEC. 5. *Be it enacted*, That no road embraced in this Act shall be entitled to its provisions, unless it shall, within four years, grade one section of thirty miles.

SEC. 6. *Be it enacted*, That the Governor shall indorse and guarantee the bonds of the Nashville and Chattanooga Railroad Company to an amount not exceeding six hundred and fifty thousand dollars, and the State shall thereupon, by virtue of this Act, be invested with a lien

upon the entire road of said company, with all its equipments, fixtures, etc., and shall have the same remedies for enforcing said lien as are given by previous Acts of the General Assembly directing an indorsement of the bonds of said company. The provisions of this Act shall extend to all railroad companies mentioned in the aforesaid Act, passed February 11, 1852, whose charters, routes, or names have been, or may hereafter be, changed; and if any two or more of said companies shall be consolidated, they, or the consolidated company, shall still be entitled to the provisions of this Act.

SEC. 7. *Be it further enacted*, That the Mississippi Central and Tennessee Railroad Company shall be entitled to the provisions of this Act from Jackson, Tennessee, to the Tennessee river, for any extension of said road which said company may make from Jackson by way of Huntingdon in the direction of Nashville. And, *provided further*, that nothing in this Act shall be so construed as to extend the time for the completion of the first section of the roads mentioned in the said Act of 11th February, 1852.

SEC. 8. *Be it enacted*, That the bonds to be issued under the provisions of this Act shall, *in no case be sold at less than par.*

SEC. 9. *Be it further enacted*, That the first section of an Act, passed February 11, 1852, entitled "An Act to establish a system of internal improvements in this State," be so amended that whenever the East Tennessee and Virginia Railroad Company shall have graded and shall have ready to put down the necessary timbers for the reception of rails, as is contemplated in said section, from Knoxville to the Holston river at Magbie's ferry, or to the Holston river at Middletown, at each end, it shall be the duty of the Governor to issue bonds of the State to the company, as is required in said section, and when said company shall have complied with the above requisitions, it shall be considered as fulfilling the requirements in full of the first section of the Act above referred to.

SEC. 10. *Be it enacted*, That the provisions of this Act shall extend to and embrace the Mississippi and Tennessee Railroad Company, chartered 5th December, 1853, and the State aid given to other roads by this Act shall be given in like manner to the said Mississippi and Tennessee Railroad, so far as the same lies in the State of Tennessee.

SEC. 11. *Be it enacted*, That the farther time of two years is hereby extended to the Southwestern Railroad Company to bring themselves within the provisions of the Act entitled "An act to establish a system of internal improvements in this State."

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF FEBRUARY 17, 1854.

AN ACT to amend the charter of the Memphis and Somerville Turnpike Company, and for other purposes.

. . . . . .

SEC. 5. *Be it enacted*, That the fourth section of an Act to establish a system of internal improvements in this State be amended by striking out the word *twenty* wherever it occurs in said section, and inserting the word *ten*, so as to allow all the railroad companies entitled to the benefits of said act, and an Act, passed February 8, 1854, as an amendment thereto, to obtain the bonds of the State upon sections of *ten* miles instead of *twenty* miles, after the first section of thirty miles has been completed.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF JANUARY 19, 1855.

AN ACT to amend the Internal Improvement Acts of 1852 and 1854.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That hereafter it shall not be necessary for the Engineer-in-Chief to swear to the subscription list, solvency, and condition of any railroad company applying for State aid, but the oath required of the Engineer shall be taken by the President and Treasurer of the company, whose duty it is to know of the condition, solvency, and financial affairs of said company.

SEC. 2. *Be it further enacted*, That it shall be lawful and proper for the East Tennessee and Virginia Railroad Company to lay down iron at either end of said road, and to draw the bonds of the State according to the General Internal Improvement Act, passed February 11, 1851–2, and the Act of February, 8, 1853–4.

SEC. 3. *Be it enacted*, That the fifth section of the Act of February 17, 1854, be so amended that hereafter the bonds of the State may issue for ten miles or more of road graded, as required by existing laws, after the completion of the first thirty miles.

SEC. 4. *Be it further enacted*, That so much of the General Internal Improvement Acts of 1851–2, and 1853 and 1854, as requires the several railroad companies embraced within the provisions of the aforesaid Acts to have the bridges, abutments, and embankments on the several sections of their respective roads completed before the bonds of the State shall issue to the companies of said roads, be so amended as to accept those bridges, abutments, and embankments which have been provided with State aid.

SEC. 5. *Be it enacted,* That this Act shall take effect from and after its passage.

NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Exhibit C.

$1,000. $1,000.

No. UNITED STATES OF AMERICA. No.

Know all men by these presents: That the State of Tennessee acknowledges to owe to , or order, One Thousand Dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the day of , 18 , with interest thereon, at the rate of six per cent. per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payments of said sums of money, and the interest thereon, at the times and places, and in the manner aforesaid, the faith of the said State of Tennessee is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the General Assembly of said State, passed February 11th, 1852, to establish a system of Internal Improvements in said State.

In testimony whereof, and in pursuance of the acts aforesaid, I, , Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the great seal of the State affixed.

[ ] Done at the Executive Department in the city of Nashville, this day of , 18 .

To which was attached the following form of coupon:

30. THE TREASURER OF THE STATE OF TENNESSEE. 30.

Will pay the bearer THIRTY DOLLARS, in the city of New York, on the first day of January, 1877, being the semi-annual interest then falling due on bond No.

J. C. SUTTRELL, 30.
Comptroller.

Exhibit D.

ACT OF FEBRUARY 21, 1856.

AN ACT to aid in constructing a railroad from Chattanooga to the East Tennessee and Georgia Railroad, in the direction of Knoxville, and for the benefit of the East Tennessee and Virginia Railroad, and for other purposes.

. . . . . .

SEC. 5. *Be it further enacted*, That it shall be the duty of the several railroad companies in this State, who have received, or may hereafter receive, bonds of the State, or the indorsement of their bonds by the State to aid in the construction of their several roads, under the provisions of the act of 1851, 1852, and the acts amendatory thereto, at the expiration of five years from the issuance or indorsement of their several bonds, annually to set apart and pay over to the Treasurer of the State two per cent. per annum upon all bonds which have been or may hereafter be issued or indorsed as aforesaid as a sinking fund for the ultimate redemption of the bonds issued or indorsed as aforesaid; which sinking fund, when paid over, the Governor, Comptroller of the Treasury, and President of the Bank of Tennessee shall invest in the bonds of the State, and reinvest all accruing interest in like securities; and they are hereby constituted a board of commissioners for the management, government, and control of said sinking fund.

SEC. 6. *Be it further enacted*, That should any of said railroad companies fail, or refuse to comply with the provisions of the fifth section of this act, it shall be the duty of the Governor forthwith to notify the Attorney-General of the district in which is situated the place of business of said company failing or refusing as aforesaid, of the fact; and thereupon the Attorney-General shall immediately proceed against said company to collect said sinking fund, in the manner prescribed in the sixth section of the act entitled "An Act to establish a system of internal improvements in this State," passed February 11, 1852.

NEIL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHEM,
Speaker of the Senate.

ACT OF MARCH 20, 1860.

AN ACT to provide for the equalization and investment of the sinking fund, on the bonds issued to or indorsed for railroads in this State.

SECTION 1. *Be it enacted by the General Assembly of Tennessee*, That the money or bonds, that have heretofore or may be paid by the cities or railroad companies in this State to the Sinking Fund Commission-

ers by the 1st of January, 1860, together with the accruing interest thereon to that date, shall be passed directly to the credit of the party having so paid the same, and be a release to said party for that amount on the debt due by them to the State of Tennessee.

SEC. 2. Said bonds shall all be canceled by said commissioners, and if indorsed bonds of any railroad company shall be canceled as hereinafter provided for the cancellation of State bonds, and shall be delivered over to said company or corporation, taking the president's of said company or the officers' of said company receipt for the same, which receipt shall be filed and a copy of the same placed upon a book, which the said commissioners shall keep for that purpose. If State bonds, they shall be canceled and filed in the office of the Secretary of State as hereinafter provided.

SEC. 3. That after the first day of January, 1860, all railroad companies or city corporations who have or may hereafter receive the bonds of the State, or its indorsement of their own bonds under the general internal improvement law of this State, or any other law, shall be required to pay two and one-half per cent. per annum as a sinking fund on the amount of the bonds so issued or indorsed by the State for said company or corporation, to be paid in equal installments on the first days of April and October, five years after the date of said bonds, and annually thereafter.

SEC. 4. All bonds issued during any one year shall be dated on the first day of January of that year.

SEC. 5. Said companies or corporations may pay said sinking fund in cash or in the like character of bonds that may have been issued or indorsed by the State for said company at their face or par value.

SEC. 6. If paid in money, the commissioners shall invest it immediately in the bonds of the State, and shall have the same canceled and filed as heretofore provided. Such bonds are to be of the same character as those issued to such company or corporation.

SEC. 7. The sinking fund, when paid, in all cases shall be passed directly to the credit of said company or corporation, and be a release to said company or corporation from that amount due by them to the State. The commissioners shall issue a receipt to each company or corporation for such payment, retaining a duplicate in a well-bound book kept for that purpose.

SEC. 8. Each and every railroad company or city corporation shall provide the interest semi-annually, as now provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued to or indorsed by the State for said company as heretofore provided.

SEC. 9. The Comptroller of the State shall keep a regular account against each company or corporation, charging them with the amount of bonds originally issued to or indorsed for said company or corpora-

tion by the State, and crediting them by the amount of the sinking fund paid, and shall furnish the Treasurer of State a statement of the amount due by each company or corporation on the first day of June and December of each year, that he may know how much interest each company or corporation has to pay.

SEC. 10. The commissioners of the sinking fund shall cancel all bonds of the State as soon as paid in or purchased, by cutting out the Governor's and Secretary of State's names, and so defacing each coupon that it can not by possibility be used or circulated, and shall file the same in the Secretary of State's office.

SEC. 11. This law shall be in full force from and after its passage, and shall repeal all laws in conflict with it, but shall not be so construed as otherwise to affect any law on the subject of the sinking fund or the payment of interest due on State or indorsed bonds.

W. C. WHITTHORNE,
Speaker of the House of Representatives.
TAZ. W. NEWMAN,
Speaker of the Senate.

Exhibit E.

ACT OF FEBRUARY 25, 1869.

AN ACT to Liquidate the State Debt, contracted in aid of Railroad Companies in the State of Tennessee.

WHEREAS, under the General Internal Improvement Laws of the State, passed from time to time, aid has been granted to various railroad companies by the loaning of six per cent. bonds of the State, to enable said companies to iron, equip, build, and bridge, and for other purposes, which is now secured to the State by a first mortgage or lien on the franchise, property, and fixtures of respective railroad companies; and,

WHEREAS, it is desirable for the general welfare of the State, that the State shall be reimbursed such amounts as have been advanced to the different railroad companies, as fast as may be practicable; therefore,

SECTION 1. *Be it enacted by the general assembly of the State of Tennessee,* That the respective railroad companies, or either of them that have created indebtedness to the State, are hereby authorized to repay any amount of the principal of such indebtedness as they have respectively created in the bonds of the State, in such amount, and at such times, as may be practicable:

Provided, however, that nothing in this Act shall be so construed as to release said railroad companies from any lien which the State may have on the same for any unpaid interest now due on said bonds of the State authorized to be surrendered by this Act.

SEC. 2. *Be it further enacted*, That any railroad company or companies repaying any indebtedness due the State under the provisions of this act, are authorized to issue bonds of equal amount and denomination with the bonds of the State paid and delivered up for cancellation, as hereinafter provided, which said railroad bonds, so issued in lieu of any amount of State bonds, shall be certified to by the comptroller, entered in a book to be kept for that purpose, with date, number, and amount, and shall be a lien, pro rata in amount and of equal validity and effect with the unretired part of the State indebtedness upon such railroad, and all its property, franchises, fixtures, and material.

SEC. 3. *Be it further enacted*, That in order to facilitate the railroad companies that may wish to avail themselves of the provisions of this act in paying the indebtedness due to the State, respectively, they, or any of them, are hereby authorized to consolidate their property, in whole or in part, with other railroad companies, and issue bonds and stock as provided for in the second section of this act, and may adopt the corporate franchise of either of the roads as the stockholders may elect, and each railroad company paying its indebtedness, and such railroad companies as may consolidate under the provisions of this act, are hereby authorized to determine, by a vote of the stockholders of said company or consolidated companies, the number of directors of such company, and elect the same under the new organization, and that the said directors, so elected, shall, according to the by-laws and rules of said corporation, elect one of their number president of said company.

SEC. 4. *Be it further enacted*, That the comptroller of the State shall receive from the railroad companies, or any of them, bonds of the State in such amounts as may be presented, and cancel the same in the presence of the officer or agent of the railroad company paying them in, and execute to the said railroad company or companies duplicate receipts for the amount and number of said bonds so paid in, and it shall further be the duty of the comptroller to certify on the bonds of any railroad company or companies repaying indebtedness due to the State, that the same has been paid, and that the so certified (bonds) are secured by first mortgage.

Provided, That said railroad companies shall liquidate their indebtedness prior to the maturity of the bonds that have caused said indebtedness; and be it further provided, that said bonds, when executed by the respective railroad companies or either of them, shall be deposited with the Comptroller of the State, whose duty it shall be to deliver said bonds, or any number of them, to the president and directors of the company, on the deposit by said president and directors or authorized agent of an equal amount of the six per cent. bonds of the State of Tennessee, with unpaid coupons attached, and the

company's first mortgage bonds, authorized to be issued by this act, shall have no validity or value except the comptroller's certificate is affixed on the face of each bond, that said bond is executed, and issued and by virtue of law taken the place of a bond of the State and is the first mortgage bond.

SEC. 5. *Be it further enacted*, That the comptroller shall be entitled to a fee of one dollar on each thousand dollars of the bonds certified as aforesaid, to be paid by the railroad company for which the same is done; and it shall be lawful for the comptroller to discharge the duties imposed by this act, by and through an agent in the city of New York; and all the provisions of this act shall attach to and become a part of the charter of any railroad company or companies acting under it.

SEC. 6. *Be it further enacted*, That by and with the consent of the board of directors of any railroad company in this State under the General Improvement Law, passed the 11th of February, 1852, and all the amendments thereto, that any person or corporation may, by paying the indebtedness of such railroad company to the State in the bonds of the State, as provided for by law, be, and they are hereby substituted and entitled to all the liens against said company for the payment of said debt that the State had or has by law, and the Governor and Secretary of State shall give such party or parties paying such indebtedness a certificate showing the facts, which shall be evidence against said company of such indebtedness to said individuals or corporations.

SEC. 7. *Be it further enacted*, That any person or persons may, with the consent and approbation of any railroad company which is indebted to, and for which the State of Tennessee holds a lien, pay the said debt, *so far as the State is concerned*, in the bonds of the State, or any coupons of bonds at par, and the person or persons so paying the debt of any railroad company with the consent of such railroad company, shall, upon filing with the treasurer of this State the written assent of said railroad company, under the corporate seal of said railroad company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being to place the person or persons so paying with the consent of said railroad company in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

SEC. 8. *Be it further enacted*, That any person or persons who may with the consent and approbation of any railroad company, pay any part or portion of the indebtedness of such company, as provided in Sec. —, shall have, hold, and be subrogated in all the rights, privileges,

and lien or liens of the State, to the extent of, and in proportion to, the amount of such indebtedness, with the same rights and privileges the State now has, to the extent of such payment or payments: *Provided the passage of this act shall not decrease the lien of the State upon any railroad of the State until the entire claim of the State is fully liquidated,* OR AFFECT THE INTEREST OF THE PRESENT BONDHOLDERS OF THE STATE; *Provided, that railroad companies which have issued second mortgage bonds, availing themselves of the provisions of this act, shall file with the comptroller bonds of the same series as those loaned to such company, for which the State holds a first mortgage lien. Provided, the bonds to be issued by the company, under the provisions of this act, shall not have a longer time to run than the bonds of the State thus released and canceled.*

SEC. 9. *Be it further enacted,* That this act shall take effect from and after its passage.

Exhibit F.

ACT OF JANUARY 2, 1870.

AN ACT for the Payment of the State Debt.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee,* That an Act entitled "An Act to liquidate the State debt, contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, be, and the same is hereby amended, so as to allow any railroad company which may be indebted to the State by reason of the bonds of the State loaned to said railroad company, to pay into the State, in liquidation of the principal of said indebtedness, any of the legally-issued six per cent. bonds of the State of Tennessee outstanding, without regard to series or number; and such payment shall, to the extent made, be a full and perfect discharge of the lien which the State holds upon the property of such railroad company, held by virtue of the bonds of the State issued to such railroad company, whether they be the same bonds or the same series of bonds issued to said company under the act passed February 11, 1852, and acts amendatory thereof, or not.

SEC. 2. *Be it further enacted,* That railroad companies issuing their own mortgage bonds under the provisions of the act which this is intended to amend, be allowed to fix the rate of interest which the said bonds of the railroad company are to bear, and all laws in conflict are hereby repealed. *Provided,* that when said railroad companies owe interest already due, coupons past due shall be taken by the comptroller or treasurer in discharge of such indebtedness for interest.

SEC. 3. *Be it further enacted,* That when any company, under the provisions of this act, shall pay into the treasury of the State bonds which have been issued by the State to said company, the said bonds